USDA

United States
Department of
Agriculture

Office of the Chief
Financial Officer

1400 Independence
Avenue, SW

Washington, DC
20250

DEC 18

Ms. Cynthia L. Johnson
Director, Cash Management Policy and Planning Division
U.S. Department of the Treasury
401- 14th Street, S.W.
Washington, D.C. 20227

Dear Ms. Johnson:

The Department of Agriculture (USDA) appreciates the opportunity to review and comment on the proposed rule of 31 CFR 208, Management of Federal Agency Disbursements. Our comments, by section of the proposed rule, include:

Section 208.2 Definitions.

- The proposed rule is silent on the use of third parties for making Federal payments such as third party drafts and convenience checks written on the Government Purchase Card account. We assume that these types of payments are acceptable as EFT under 31 CFR 208 since the actual disbursement of Federal funds is by Automated Clearing House to the third party contractor. Without third party payments being considered EFT, USDA would have a difficult time finding an alternate mechanism to replace imprest funds and other small purchase type payments, especially in rural areas. While many of these payments could qualify for a waiver because they are non-recurring or for geographic hardship, using the waiver process would add significantly to the administrative burden. Will Treasury give agencies clearer guidance regarding third party payments?

Section 208.4 Waivers.

- Waivers appear to have been substantially addressed for many areas; however, there needs to be a process for other unidentified conditions that will inevitably come up but are not addressed in the proposed rule. Waiver categories established as of 1999

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should be re-evaluated periodically to determine if they are still justified or if new categories of waivers are necessary. Waivers not justifiable upon re-evaluation, should be modified or terminated. Termination could be triggered by events, such as the availability of new electronic funds transfer (EFT) mechanisms, rapidly changing technology, or other specified criteria.

- USDA requested waivers for several categories of payments. The waivers in the proposed rule cover most of these categories of payments. However, the waivers do not address the subject of joint payees. To receive an EFT payment, joint payees would have to open a joint bank account for the sole purpose of accepting payments. Sometimes the joint payees are a government agency with an individual. Some, but not all, of these payments could be covered under the non-recurring payment waiver. In addition, consideration needs to be given to how EFT can be appropriately made for Assignment of Claims.

- The requirement for written waiver certification will be very burdensome for both the recipient and the Federal agencies. Time delays in obtaining and processing written waiver certifications could delay processing of payments. It would be beneficial for Treasury to provide some guidance or standardization on how waivers should be handled. The issue needs additional clarification on the role of the Treasury, Federal agencies, and agency payment processing centers. What role should each play in processing or recording the waivers? Should the written certification, original or copy, be attached to the payment document, e.g., contract, purchase order, etc.?

- Should there be a data base of those individuals with waivers at the Treasury or the Federal agency level? Has any thought been given to a Governmentwide central data base for waivers? A central waiver repository could save agencies and recipients much effort and frustration. Treasury should look at possibly linking or combining a centralized waiver data base with a TIN verification data base.

- Some recipients may receive multiple payments from multiple Federal agencies. It might be possible that a recipient is receiving EFT payments from one agency but certifying a hardship waiver for another. Is that scenario acceptable?

- The requirement for written waivers appears to only apply to Sections 208.4 (a) and (b) for hardship waivers and the unbanked. Who determines the applicability of the other six category of waivers -- the agency, Treasury, or the recipient? How are the remaining six waivers documented? Will there be more Treasury guidance regarding these issues?

- Treasury developed a common sense approach regarding waivers for one-time non-recurring payments. In many cases the requirement to gather and verify banking information is more time consuming and costly than issuing a check. It is unclear who is responsible for doing the cost/benefit analysis for non-recurring payments? Will there be or should there be any standardization between Federal agencies for doing the cost/benefit analysis? Treasury should provide guidance on a formula, cost elements, and other data elements that should be used in the analysis.

- Will there be any Treasury guidance regarding international payments where political, financial, or communications infrastructure in a foreign country does or does not support payments by EFT? We suggest that Treasury work with the State Department to develop a process for EFT of foreign payments and provide guidance to those agencies using State Department embassies to accomplish disbursements in foreign locations.

- The waiver relating to disasters designated by the President or an authorized agency administrator should not have a time limitation. Like a military operation, Federal assistance agencies should be allowed to direct all attention to disaster areas, flood victims, earthquake victims, etc. without having the burden of requesting an extended wavier period. The available waiver should end at the termination of the designated disaster or emergency whether the period is longer or shorter than 120 days.

- It is not clear what alternative mechanisms are acceptable for making payments that qualify for waivers. In some instances under these waivers, arguments could be made for cash payments. Cash payments, i.e. imprest fund payments, were not addressed in the proposed rule. Although USDA's policy is to reduce and eliminate imprest funds to the maximum extent possible, the need for change making and cash payments in rural and remote areas may not entirely go away. Treasury should provide guidance and alternatives regarding cash payments in relation to waivers.

- Supplementary Information, III. Section-by-Section Analysis, states the lack of remittance data is the primary reason why vendors are reluctant to receive payment by EFT. Treasury should clarify its position regarding the receipt of addendum data and the relationship between the vendor and his/her financial institution? Treasury should consider a waiver to vendors where the financial infrastructure does not provide for adequate delivery of remittance data to a vendor.

Section 208.5 Access to Account Provided by Treasury.

- USDA believes Electronic Transfer Accounts (ETA) provided to the unbanked by Treasury can serve a beneficial role in implementing the requirement of the Debt Collection Improvement Act. However, a debit card based ETA is not realistic in rural and remote areas. While in urban areas, Automated Teller Machines (ATM) are on every corner, many rural areas do not have access to an ATM within 100 miles. In addition, the majority of ATM's have a pre-set "cash per day" limitation, which may not meet the cash needs of the rural client.

- Cost of an ETA will be an important issue to an unbanked recipient due to financial hardship. They may desire to have the security of a financial institution but need only a low cost account that meets their basic needs. Requiring that a minimum balance be maintained may not be feasible. ETAs should offer only the basic services. If a recipient would like additional features other than a basic account, the recipient should be charged for the additional features. The number of deposits or withdrawals a recipient is allowed is an issue that should be addressed between Treasury, banks, and consumer groups.

- The purposed rule limits the ETA to those individuals who are unbanked. The ETA should also be available for those customers who currently have a bank account but refuse to provide their account information to the Government. Establishing a low-cost account will allow Federal payments to be made by EFT without infringing on the individual's right to privacy.

Section 208.7 Agency Responsibilities.

- Prior to publishing the final rule, 31 CFR 208, Treasury needs to synchronize the understanding of responsibilities for collection of EFT and Taxpayer Identification Number (TIN) information with the General Services Administration (GSA) and the procurement community. Treasury, the Office of Management and Budget, and GSA must come to a common understanding of what the Governmentwide policy should be regarding EFT contract language, collection of TINs, and collection of EFT enrollment information. The Federal Acquisition Regulations (FAR) and 31 CFR 208 must agree. The guidance must be communicated to both the financial and the procurement communities in a timely matter.

- Does Treasury plan any type of central vendor registration data base that can be used for all Government payments, not just for the Department of Defense (DOD)? Or is each agency on their own for EFT vendor registration?

Section 208.8 Recipient Responsibilities.

- The final rule should require recipients to keep Federal agencies informed of any changes to bank routing information (i.e., account number changes, account closures, etc.).

Section 208.9 Compliance.

- The proposed rule does not address the appropriate actions for a Federal agency to take when a recipient becomes eligible and entitled to a payment, but the recipient refuses to provide account information, TIN, or sign a request for a waiver. For vendor payments, we understand this issue will be addressed in the forthcoming revised OMB Circular A-125, Prompt Payment. For payments not subject to the Prompt Payment Act, Treasury needs to address the issue of appropriate action when there is no program regulation requiring EFT payment.

- We anticipate Treasury will monitor agency EFT and non-EFT payments beginning in 1999, with follow-up inquiries and data calls regarding identification of trends involving waivers and non-EFT disbursements. What type of supporting documentation will Treasury require for non-EFT disbursements and who will be required to maintain the documentation?

General Comments

- Treasury guidance on the Automated Clearing House pre-notification processes should be addressed. Responsibility for account information data when financial institutions (FI) do not respond to pre-notifications needs to be addressed. What is Treasury's position regarding the elimination of or drastically modifying the pre-notification process when establishing a recipient for EFT?

- We understand that the National Automated Clearing House Association (NACHA) is establishing a rule requiring FIs to pass addendum data to recipients. Does the NACHA rule address an enforcement mechanism?

If there are any questions regarding USDA's comments on the 31 CFR 208 rule, please contact Dale Theurer on 202-720-1167.

Sincerely,

Irwin T. David
Acting Chief Financial Officer

cc: CFO Advisory Council
John Ortego, NFC